



Assets Recovery Agency v Geospatial Engineers and Business Consultants Ltd; Equity Bank (Interested Party) (Anti-Corruption and Economic Crimes Civil Suit E009 of 2023) [2025] KEHC 8252 (KLR) (Anti-Corruption and Economic Crimes) (5 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8252 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES CIVIL SUIT E009 OF 2023**

BM MUSYOKI, J

JUNE 5, 2025

BETWEEN

ASSETS RECOVERY AGENCY APPLICANT

AND

GEOSPATIAL ENGINEERS AND BUSINESS CONSULTANTS LTD RESPONDENT

AND

EQUITY BANK INTERESTED PARTY

RULING

1. On 8-11-2022, the Chief Magistrate issued order in anti-corruption miscellaneous criminal application number E119 of 2022 which among others restricted debits of account number XXXXXXXXXXXXX held in Equity Bank Ltd, Harambee Avenue Branch and operated by the respondent for a period of 21 days (hereinafter referred to as the first order). On 29-11-2022 Honourable V.N. Wakumile (Mr.) SPM extended the order for a further period of fourteen days.
2. On 14-12-2022, this court issued preservation orders in miscellaneous application number E060 of 2022 (hereinafter referred to as the second order) in the following terms;
 1. That preservation orders be and are hereby issued prohibiting the respondent and/or employees, agents, servants or any other persons acting on its behalf from transacting, transferring and/or dealing in any manner with Kshs 13,867,254.28 deposited in the respondent's account number XXXXXXXXXXXXX held in Equity Bank Ltd, Harambee Avenue Branch.



2. That the preservation order shall be for a period of ninety (90) days as provided in Section 84 of the [Proceeds of Crime and Anti-Money Laundering Act](#).
3. That the orders be served upon the respondent within 14 days of today's date.
3. The orders were served on the interested party and the respondent on 8-11-2022 and 15-12-2022 respectively. The second order was gazetted on 23-12-2022 vide gazette notice number 15941. Thereafter, this matter was filed on 23-03-2023 which was about 99 days after the order was issued and proceeded for hearing until 15th July 2024 when this court delivered judgement in which the court forfeited Kshs 13,867,254.28 to the applicant.
4. Upon delivery of the judgment, the applicant discovered that the account did not have enough funds to satisfy the judgment hence the application dated 14-10-2024 which is the subject of this ruling which prays for the following orders;
 1. That the Honourable Court be pleased to order that Mr. RMN, the director of Geospatial Engineers and Business Consultants Ltd the respondent herein and Dr. JM, the Chief Executive Officer of Equity Bank Limited be personally physically present on all dates appointed for hearing and delivery of the ruling of the instant application.
 2. That Honourable Court be pleased to cite for contempt;
 - a. RMN, the Director of Geospatial Engineers and Business Consultants Ltd, the Respondent herein.
 - b. Geospatial Engineers and Business Consultants Ltd, the Respondent herein.
 - c. Dr. JM, the Chief Executive Officer of Equity Bank Ltd, the interested party herein.
 - d. Equity Bank Ltd, the interested party.
 3. That this Honourable Court be pleased to issue an order directing Mr. RMN, the director of the Respondent, Geospatial Engineers and Business Consultants Ltd the respondent herein, Dr. JM, the Chief Executive Officer of Equity Bank Ltd and the Interested Party jointly/severally deposit the forfeited cash of Ksh. 13,867,254.28 to the Applicants Criminal Asset Recovery Fund Account No. XXXXXXXXXX held at Kenya Commercial Bank.
 4. That this Hounourable Court be pleased to convict or fine the contemnors pursuant to Sections 14 as read with Section 16(4) of the [Proceeds of Crime and Anti-Money Laundering Act](#):
 - a. RMN the Director of Geospatial Engineers and Business Consultants Ltd, the Respondent herein.
 - b. Geospatial Engineers and Business Consultants Ltd, the Respondent herein.
 - c. Dr. JM, the Chief Executive Officer of Equity Bank Ltd, the Interested Party herein.
 - d. Equity Bank Limited, the Interested Party.
 5. That the Honourable Court makes any other ancillary order it may deem fit for the proper, fair, effective execution of its orders.
 6. That costs be provided for.



5. The application is supported by affidavit of PC Alfred Musali sworn on 14th October 2024. The deponent avers that after the judgement of this court, the applicant asked the interested party to transfer Kshs 13,867,254.28 to its account upon which the interested party vide a letter dated 6th September 2024 responded and stated that they had lifted the preservation orders since they were not served with an order extending them or notified of the forfeiture proceedings.
6. Upon receipt of the aforesaid letter, the applicant commenced investigations to establish the status of the account through warrants obtained in the Chief Magistrate anti-corruption court miscellaneous application number E885 of 2024 and upon analysing statement of the said account, the applicant discovered that despite service of the aforesaid orders, the interested party did not place any restriction to the respondent's account and the respondent continued to transfer/withdraw the funds in the said account on diverse dates between 28-10-2022 and 21-08-2023. According to the applicant, the act of transactions aforesaid were in disobedience of the court orders mentioned above. The deponent added that the analysis of the account statement showed that the interested party did not restrict the withdraws or debits which is an offence under Section 14 as read together with Section 16(4) of the *Proceeds of Crime and Anti-Money Laundering Act* (hereinafter referred to as 'POCAMLA').
7. The respondent through its director, RMN opposed the application through a replying affidavit sworn on 24th January 2025. Robinson depones that it is true that the respondent was served with the second order and at the time the order was served, the account held Kshs 49,999,148.40 which he alleged to be a disbursement from the interested party.
8. He adds that upon expiry of 90 days of the preservation orders, there was no extension neither was the respondent notified of any forfeiture proceedings pursuant to the provisions of Section 84 of the POCAMLA and as such the respondent was at liberty to access the account.
9. He stated further that the account was an escrow/facility account to oversee a project on LR number XXXXX/XXX which was financed by the interested party and the money flagged by the applicant were disbursements of the facility and not money belonging to the respondent and as such it could not be subject to the lien of preservation. He alleges that the amounts deposited in the account were funds refundable to the interested party at the tune of Kshs 634,538,968.70 the same being the cumulative loans obtained from the interested party. He has exhibited correspondences, agreement, charge and deed of guarantee and indemnity and other supporting documents for the said project. He states that the debits shown on the dates of interest were payments to contractors and service providers of the project.
10. The interested party filed a response vide a replying affidavit dated 22nd November 2024 sworn by Roy Akubu who describes himself as the General Manager, Legal Services in the interested party. He starts by denying that Doctor JM is a director of the interested party and states that he is instead Chief Executive Office of Equity Group Holdings Ltd to which the interested party is a subsidiary and as such he is not involved in day to day running of the interested party. He avers further that one Moses Okoth Nyabanda is the current managing director of Equity Bank (Kenya) Limited.
11. He adds that the interested party was served with the first order on 8-11-2022. He alleges that the interested party complied with the said court order by providing the referenced documents and restricting the account for twenty one days which lapsed on 29-11-2022. The deponent confirms further that on 15-12-2022, the interested party was served with the second order which was valid for ninety days and that the period lapsed on 15th March 2023. He also states that the interested party lifted the restrictions upon lapse of the orders as it was not served with an extension of the order or a



forfeiture application. He repeated what the respondent deponed about the account being an escrow account for some project the interested party was financing for the respondent.

12. The application was argued by way of written submissions. I have read the submissions of the applicant dated 18th February 2025, the respondent's dated 14th March 2024 and those of the interested party dated 14th March 2024. The law on contempt of court posits that for the application to succeed, the applicant must demonstrate that there was a court order in force at the time the act alleged to constitute contempt of court was done, that the order was served upon the contemnor or the contemnor was aware of the same and that the contemnor willfully disobeyed the said court order. The standard of proof is higher than balance of probabilities but lower than beyond reasonable doubts. Honourable Justice Mativo held in *Katsuri Limited v Kapurchand Devar Shah* (2016) KEHC 6447 (KLR) that;

‘The fact that the liberty of the defendant could be affected means that the standard of prove is higher than the standard in civil cases. It is incumbent on the applicant to prove that the defendant's conduct was deliberate in the sense that he or she deliberately or willfully acted in a manner that breached the order.’

13. In this matter, existence of the two court orders and service are not disputed. The only disputes are service of the order dated 29-11-2022 which extended the first order and whether the act of the respondent accessing the account was in contempt of the said orders. However, the period between 29-11-2022 and 14-12-2022 is not relevant to this application. So, whether the order dated 8-11-2022 was extended or not does not affect the merits of the application.

14. It is clear that the orders restricted debits and transactions in the respondent's account. It is also clear that the orders were to run for specified periods although the 2nd order would have been extended by operation of the law if the application for forfeiture was filed within the timelines provided for in Section 84 of the POCAMLA. The question to be answered at this stage is whether the interested party and the respondent debited or transacted in the two accounts during the period the orders were in place, that is between 8-11-2022 and 14-12-2022 for the first order and between 15-12-2022 and the date of judgment. Before I analyse whether there were such debits, it is important to address the period of validity of the second order. Section 84 of the POCAMLA provides that;

‘A preservation order shall expire ninety days after the date on which notice of the making of the order is published in the Gazette, unless-

- a. there is an application for a forfeiture order pending before the court in respect of the property subject to the preservation order;
- b. there is an unsatisfied forfeiture order in force in relation to the property subject to the preservation order; or
- c. the order is rescinded before the expiry of that period.’

15. The order was published on 23-12-2022. The Judge had ordered that the same shall remain in force for ninety days as per Section 84 of the POCAMLA. Reconciling the Judge's order and Section 84, the period of validity of the order started to run from 23-12-2022. Ninety days from that date takes me to 23rd March 2023 which means that the forfeiture application was filed within the ninety days and pursuant to Section 84(a), the order remained in force until the application would be determined.

16. I now turn to the question of whether the respondent and the interest party disobeyed the court orders. The respondent and the interested parties have argued that they were not made aware of the application for forfeiture and that is why the interested party lifted the restrictions. The interested party has stated that it lifted the restrictions on 15-03-2023 which means it did so even before the ninety days lapsed.



I hold position that where a bank or any other entity is served with an order of the court restricting or commanding it do something whether the same has timelines or not, it has a duty to counter check the prevailing position and status of the of the order before taking an action which would reflect or affect the status of the subject matter. The respondent and the interested party were under a legal obligation to ascertain whether there was a forfeiture application in place. Be that as it may, even as at the time the orders lapsed, the account had a credit balance of Kshs 666.25 against Kshs 49,999,148.40 at the time of service of the order.

17. I have looked at the statement of the account whose content has not been challenged or denied and I note that the following were debited from the account during the period the first order was in force;

Kshs 4,235,161.04 on 10-11-2022;

Kshs 45,760,000.00 on 10-11-2022.;

Kshs 120.00 on 10-11-2022;

Kshs 580.00 on 18-11-2022; and

Kshs 4,138.96 on 25-11-2022.

18. And the following debits were transacted during the period the second order was issued and the date the forfeiture application was filed;

Kshs 30,000,000.00 on 15-12-2022;

Kshs 19,500,000.00 on 15-12-2022 which was reversed and debited again the same day;

Kshs 120.00 on 15-12-2022;

KShs 120.00 on 15-12-2022;

Kshs 120.00 on 15-12-2022;

Kshs 2.15 on 12-01-2023;

Kshs 498,000.00 on 21-01-2023; and

Kshs 120.00 on 21-01-2023;

19. The transactions continued after the filing of the forfeiture application as if there were no restrictions in place. As correctly observed by the applicants, the respondent actively participated in the forfeiture application and cannot claim not to have been aware of the same.

20. My understanding of a court order restricting, preserving or freezing a bank account means that there should not be any transfers, payments or dealing with the account without first reverting to the court which made the order and seeking authority to do so or the said orders are vacated or lifted. The first order was clear that the account should not be debited meaning that credits were not restricted. The explanation given by the respondent and the interested party that the same was an escrow account for financing a project and not subject to restrictions or lien is to me an escapist excuse and in itself contemptuous. The respondent and the interested party are seeking to explain away a deliberate disobedience of a court order. If they held the position that the orders should not have been made, they should have made an application to lift, vacate or vary the orders. That is the indisputable position



in law as it was held by the Court of Appeal in *Accredo AG & 3 others v Stefano Uccelli & another* (2019) KECA 385 (KLR) thus;

‘ As such, we see no reason to fault the learned Judge for directing compliance of those orders. We say so because in the persuasive English authority that has been quoted with approval severally by this Court, *Romer, L. J. in Hadkinson vs Hadkinson* [1952] ALL ER 567 while discussing the significance of obedience of court orders expressed himself as follows:

It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.”

21. The funds were in the hands, control and custody of the respondent and held under its name. Any internal or private arrangements between the respondent and the interested party did not and cannot take precedence over orders of the court. The nature of forfeiture proceedings under POCAMLA is that the law seeks to go for the suspected properties whether the same are registered to the said suspected persons or third parties.
22. In view of the above, I return the inevitable verdict that the respondent and the interested party deliberately disobeyed the two court orders by either failing to restrict the account or transacting with the account when they were well aware that it was restricted and in the hands of the court.
23. I now turn to determine whether the natural persons sought to be cited were responsible for the disobedience of the court orders. The interested party and the respondent are limited liability companies and they act through natural persons. A person in authority or control of a limited liability company who aids the company in disobeying a court order must be held jointly and severally liable for the actions. A director or management of a limited liability company cannot hide behind the corporate veil to participate or aid in disobedience of court orders.
24. RMN has sworn an affidavit confirming that he is a director of the respondent. He has not denied participating in the running of the account. The second order of the court clearly restrained the respondent and its agents or employees from transacting or dealing in the said account. He was aware that there was a court order and operated the account on behalf of the respondent and in my opinion, he cannot escape culpability.
25. It has been deponed that Dr. JM is not involved in the day to day running of the interested party. No evidence has been tendered to prove that he was involved in the running of the interested party or running or management of the account. The applicant has not shown grounds on which it believed that he was involved in the daily business of the interested party. The burden of proof was on the applicant to prove that Dr. JM was the managing director or CEO of the interested party. Its supplementary affidavit sworn on 16th January 2024 was in response to the replying affidavits of the respondent and the interested which among other things indicated that Dr. James was Chief Executive Officer of the holding company and was not involved in management of the interested party and the same being response to that denial, it should have tabled evidence of the position the applicant held. With this in mind, I find that the applicant has failed to prove the allegations against Dr JM.
26. The upshot of the above is that, I find the respondent herein (Geospatial Engineers and Business Consultants Ltd), the interested party (Equity Bank Limited) and RMN guilty of contempt of court orders dated 8-11-2022 in Milimani Chief Magistrate Anti-Corruption miscellaneous criminal



application number E119 of 2022 and this court's orders dated 14-12-2022 in miscellaneous civil application number E060 of 2022 and convict them accordingly. The named persons and their directors shall appear physically in court for mitigation and sentence on a date to be fixed after this ruling. Prayers 3 and 4 of the application shall await the outcome of mitigation and sentenced.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF JUNE 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT .

Ruling delivered in presence of Mr. Githinji holding brief for Miss Muchiri for the applicant, Mr. Amolo Enock for the respondent and Mr. Mbaji holding brief for Mr. Ngugi for the interested party and Dr. JM

